

After reviewing the claimant's testimony given at the preliminary hearing held April 10, 1996, the deposition testimony of Michael Barnett and Neill Dobler, together with the exhibits admitted into evidence and the briefs of the parties the Appeals Board for preliminary hearing purposes finds, as follows:

For the reasons stated below the Order of the Administrative Law Judge is affirmed.

Claimant began working for respondent on June 19, 1995. He continued working until Friday, November 3, 1995. He first reported the injury to his supervisor, Neill Dobler, on Monday, November 6, 1995. Claimant testified he injured himself on November 3, 1995 while performing his regular work activities which included lifting 45 to 50 concrete forms weighing between 25 and 30 pounds each. Claimant worked the full day of his accident. Although claimant was tired and achy at the end of work Friday, he did not know he was hurt until the next day when he woke up with pain in his right shoulder and neck. He was off Saturday and Sunday and called Neill Dobler on Monday, November 6, 1995 and reported the injury. Mr. Dobler denies claimant related his back injury to work during that conversation. Instead, Mr. Dobler recalls claimant saying he injured his back moving out of his sister's house over the weekend.

Claimant did not seek medical treatment until he was examined by Sharon L. McKinney, D.O., on February 7, 1996. The records of Dr. McKinney indicate claimant's injuries and symptoms were work related. However, she appears to have relied upon the history given her by claimant. Her opinion relating the lifting at work as the cause of claimant's condition is somewhat suspect, given the length of time that had passed before her examination of claimant. Nevertheless, there was no expert medical testimony expressing an opinion that claimant's condition was not work related. To this extent, Dr. McKinney's medical opinion in the current state of the record is uncontroverted. Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy and is otherwise regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The Administrative Law Judge apparently found claimant to be a credible witness because he awarded benefits based upon claimant's testimony, finding that claimant suffered injury by accident on the date alleged which arose out of and in the course of claimant's employment and that claimant gave timely notice of the injury. The Administrative Law Judge, in this case, had the opportunity to see the in-person testimony of the claimant. He therefore had an opportunity to judge the claimant's demeanor and credibility while claimant was testifying. Accordingly, the Appeals Board takes into consideration the Administrative Law Judge's findings with regard to the credibility of the claimant as a witness and will give some deference to his conclusions in that regard.

Claimant's delay in seeking medical treatment coupled with his disappearance, lengthy convalescence or retreat to St. John, Kansas, causes concern. However, we have only claimant's explanation of these events. Based upon the Appeals Board review of the record as a whole, we find that the Order by the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the April 17, 1996 Order of Administrative Law Judge Floyd V. Palmer should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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**BOARD MEMBER**

- c:     Seth G. Valerius, Topeka, KS  
       Marcia L Yates, Kansas City, MO  
       Floyd V. Palmer, Administrative Law Judge  
       Philip S. Harness, Director